

Message Text

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ACTION OES-07

INFO OCT-01 ARA-14 ISO-00 L-03 EB-08 CA-01 SCS-06
H-02 INR-10 DLOS-09 CG-00 DOTE-00 SS-15 TRSE-00
COME-00 /076 W

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R 231623Z JUN 78

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 8007

INFO /AMEMBASSY MEXICO 1002

/NAT MARINE FISHERIES SERVICE ST PETERSBURG FLA

AMCONSUL BELEM

UNCLAS BRASILIA 4941

PASS COMMERCE FOR NOAA, MEXICO FOR RFA

E.O. 11652: N/A

TAGS: EFIS, CPRS, BR

SUBJECT: CONFISCATION OF EQUIPMENT FROM SEIZED US VESSELS:
BACKGROUND NOTES

REF: (A) BELEM 0161; (B) 75 BRASILIA 3443

1. SUMMARY. TEXT AND TRANSLATION OF ARTICLE 9 OF DECREE LAW NO. 221 OF FEBRUARY 28, 1967 GIVEN BELOW. ALSO GIVEN IS GOB'S INTERPRETATION OF THIS ARTICLE PROVIDED TO EMBASSY IN A DIPLOMATIC NOTE IN 1975. THE EXPIRED BILATERAL AGREEMENT CONCERNING SHRIMP ALLOWED FOR POSSIBILITY OF "FORFEITURE OF THE FISHING GEAR", BUT IN PRACTICE GOB ONLY EMPLOYED PORTION OF ARTICLE DEALING WITH FORFEITURE OF CATCH. END SUMMARY.

2. PORTUGUESE TEXT OF ARTICLE 9 OR DECREE LAW NO. 221 OF FEBRUARY 28, 1967:

AS EMBARCACOES ESTRANGEIRAS SOMENT PODERAO REALIZAR ATIVIDADES PESQUEIRAS NAS AGUAS INDICADAS NO ARTIGO 4 DESTE DECRETO LEI, QUANDO AUTORIZADOS POR ATO DO MINISTRO
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DE ESTADO DOS NEGOCIOS DA AGRICULTURA. PARA OS EFEITOS DESTE DECRETO LEI A INFRACAO A ESTE ARTIGO CONSTITUI DELITO DE CONTRABANDO PODENDO O PODER PUBLICO DETERMINAR A INTERDICAÇÃO DA EMBARCACAO, SEU EQUIPAMENTO E CARGA, E RESPONSABILIZAR O COMANDANTE NOS TERMOS DA LEGISLACAO PENAL VIGENTE.

3. INFORMAL TRANSLATION OF ARTICLE 9 OF DECREE LAW

221 OF 28 FEB 1967:

FOREIGN VESSELS WILL BE ABLE TO FISH IN THOSE AREAS INDICATED IN ARTICLE 4 (BRAZILIAN TERRITORIAL WATERS) ONLY WHEN AUTHORIZED BY THE MINISTER OF STATE FOR AGRICULTURAL BUSINESS. THE VIOLATION OF THIS ARTICLE CONSTITUTES THE CRIME OF CONTRABAND; THE PUBLIC AUTHORITIES CAN ORDER THE SEIZURE OF THE VESSEL, ITS EQUIPMENT AND CARGO, AND HOLD THE COMMANDER OF THE VESSEL LIABLE UNDER APPLICABLE CRIMINAL LEGISLATION.

4. IN REGARD TO THE SEIZURE OF TWO SHRIMP BOATS IN 1975

(REF B) EMBASSY RECEIVED DIPLOMATIC NOTE WHICH STATED, INTER ALIA: "THOSE RESPONSIBLE FOR FOREIGN VESSELS THAT DO NOT COMPLY WITH THESE REQUIREMENTS WILL BE CHARGED WITH THE CRIME OF SMUGGLING IN ACCORDANCE WITH ARTICLE 9 OF DECREE LAW 221 OF FEB 28, 1967; IN SUCH CASES THE PUBLIC AUTHORITY MAY ORDER THE INTERDICTION OF VESSEL, ITS EQUIPMENT AND CARGO, AND CHARGE THE CAPTAIN UNDER THE PREVAILING PENAL LEGISLATION. THE PRACTICAL CONSEQUENCES OF THESE LEGAL PROVISIONS CAN BE THE LOSS OF THE VESSEL, EQUIPMENT AND CARGO, IN FAVOR OF THE NATIONAL TREASURY, AS WELL AS THE IMPRISONMENT OF THE CAPTAIN."

5. WASHINGTON AGENCIES WILL RECALL THAT THE AGREEMENT BETWEEN THE GOVERNMENTS OF THE US AND THE FEDERATIVE UNCLASSIFIED

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REPUBLIC OF BRAZIL CONCERNING SHRIMP, WHICH EXPIRED DECEMBER 31, 1977, STATED IN ARTICLE 5 (4): IF THE NATURE OF THE VIOLATION WARRANTS IT, AND AFTER CARRYING OUT THE PROVISION OF ARTICLE 10, VESSELS MAY ALSO SUFFER FORFEITURE OF THAT PART OF THE CATCH DETERMINED TO BE TAKEN ILLEGALLY AND FORFEITURE OF THE FISHING GEAR." ALTHOUGH UNDER THIS AND EARLIER AGREEMENTS THE GOB GENERALLY REQUIRED FORFEITURE OF THE CATCH, IT DID NOT EXERCISE ITS OPTION REGARDING FORFEITURE OF THE FISHING GEAR. IT WILL BE RECALLED THAT THE GOB CONSISTENTLY MADE EFFORTS TO BE ACCOMODATING IN THE SEIZURE CASES UNDER THE AGREEMENTS. SAYRE

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